

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 379

AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-5-1-2 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2006]: Sec. 2. (a) The secretary of state shall keep and preserve the following:

- (1) The enrolled copy of the Constitution of the state.
- (2) The manuscripts containing the enrolled acts and joint resolutions of the general assembly.
- (3) All the official bonds of state officers except the secretary of state's bond.
- (4) All written contracts to which the state is a party, unless required to be deposited elsewhere.
- (5) Any rule or other agency statement that is filed under IC 4-22-2 **before July 1, 2006**.

(b) All documents described in subsection (a)(1), (a)(2) or (a)(5) may be transferred by the secretary of state to the commission on public records for safekeeping, and the commission shall receive and safely preserve them when transferred. The secretary of state and the commission on public records shall establish an indexing system so that the secretary of state, an agency, or the commission on public records can comply with a request under IC 5-14-3 to inspect or copy a transferred document described in subsection (a)(5), including the full text of a matter incorporated by reference into a document described in subsection (a)(5). The indexing system must at least

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identify transferred documents by the following:

- (1) Indiana Administrative Code citation.
- (2) Indiana Register document control number or volume and page number.
- (3) Year of adoption.
- (4) General subject matter.

(c) Regardless of whether a document described in subsection (a)(1) or (a)(2) is transferred to the commission on public records under subsection (b), when deemed expedient or necessary for the preservation of the documents, the secretary of state may copy the documents by any micrographic technique, and the micrographic copies shall be stored in a place other than in the state capitol building or the Indiana state library.

(d) The secretary of state may copy in micrographic form the complete contents of each rule that is filed with the secretary of state's office under IC 4-22-2 **before July 1, 2006**. Both the rule and the full text of matters incorporated by reference into the rule may be copied.

(e) Micrographic copies prepared under subsection (d) must conform with the following:

- (1) The standards developed by the supreme court and the oversight commission on public records under IC 5-15-5.1-8.
- (2) The standards developed in an agreement between the secretary of state, the publisher of the Indiana Register, the governor, the attorney general, the Indiana library and historical department, and the commission on public records.

(f) The secretary of state may micrographically copy documents under subsection (d):

- (1) in the micrographic laboratory operated by the commission on public records under IC 5-15-5.1-8;
- (2) with equipment and technology operated by the secretary of state; or
- (3) through a contract for services procured under IC 5-22.

(g) When a document is micrographically copied under this section, the original documents shall never be destroyed even if microfilmed. However, if the secretary of state has the capacity to make certifiable copies from a micrographic media prepared under subsection (d), the secretary of state may return to its originating agency the full text of any matter that is incorporated by reference into a rule and micrographically copied.

SECTION 2. IC 4-22-2-19, AS AMENDED BY P.L.215-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 19. (a) Except as provided in section 23.1 of this

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chapter, this section does not apply to the adoption of rules:

(1) required to receive or maintain:

- (A) delegation;
- (B) primacy; or
- (C) approval;

for state implementation or operation of a program established under federal law;

(2) that amend an existing rule;

(3) required or authorized by statutes enacted before June 30, 1995; or

(4) required or authorized by statutes enacted before June 30, 1995, and recodified in the same or similar form after June 29, 1995, in response to a program of statutory recodification conducted by the code revision commission.

(b) If an agency will have statutory authority to adopt a rule at the time that the rule becomes effective, the agency may conduct any part of its rulemaking action before the statute authorizing the rule becomes effective.

(c) However, an agency shall:

(1) begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule; or

(2) if an agency cannot comply with subdivision (1), provide:

(A) written notification to the administrative rules oversight committee; **and**

(B) **electronic notice to the publisher;**

stating the reasons for the agency's noncompliance.

(d) If an agency notifies the administrative rules oversight committee concerning a rule in compliance with ~~subdivision (2)~~, **subsection (c)(2)** failure to adopt the rule within the time specified in ~~subdivision (1)~~ **subsection (c)(1)** does not invalidate the rule.

SECTION 3. IC 4-22-2-20, AS AMENDED BY P.L.215-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. (a) Whenever an agency submits a rule to the publisher, the attorney general, ~~or the governor or the secretary of state~~ under this chapter, the agency shall submit the rule in the form of a written document that:

(1) is clear, concise, and easy to interpret and to apply; and

(2) uses the format, numbering system, standards, and techniques established under section 42 of this chapter.

(b) After June 30, 2006, all documents submitted to the publisher under this chapter must be submitted electronically in the format specified by the publisher.

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SECTION 4. IC 4-22-2-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 21. (a) If incorporation of the text in full would be cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference into a rule part or all of any of the following matters:

- (1) A federal or state statute, rule, or regulation.
- (2) A code, manual, or other standard adopted by an agent of the United States, a state, or a nationally recognized organization or association.
- (3) A manual of the department of local government finance adopted in a rule described in IC 6-1.1-31-9.

(b) Each matter incorporated by reference under subsection (a) must be fully and exactly described.

(c) An agency may refer to a matter that is directly or indirectly referred to in a primary matter by fully and exactly describing the primary matter.

(d) Whenever an agency submits a rule to the attorney general, the governor, or the ~~secretary of state~~ **publisher** under this chapter, the agency shall also submit a copy of the full text of each matter incorporated by reference under subsection (a) into the rule, other than the following:

- (1) An Indiana statute or rule.
- (2) A form or instructions for a form numbered by the commission on public records under IC 5-15-5.1-6.
- (3) The source of a statement that is quoted or paraphrased in full in the rule.
- (4) Any matter that has been **previously** filed with the:
 - (A) secretary of state before ~~the date that the rule containing the incorporation is filed: July 1, 2006; or~~
 - (B) **publisher after June 30, 2006.**
- (5) Any matter referred to in subsection (c) as a matter that is directly or indirectly referred to in a primary matter.

(e) An agency may comply with subsection (d) by submitting a paper or an electronic copy of the full text of the matter incorporated by reference.

SECTION 5. IC 4-22-2-23.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23.1. (a) This section and section 19(b) of this chapter **do not** apply to rules adopted under IC 4-22-2-37.1.

(b) Before or after an agency notifies the public of its intention to adopt a rule under section 24 of this chapter, the agency may solicit comments from all or any segment of the public on the need for a rule,

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the drafting of a rule, or any other subject related to a rulemaking action. The procedures that the agency may use include the holding of conferences and the inviting of written suggestions, facts, arguments, or views. An agency's failure to consider comments received under this section does not invalidate a rule subsequently adopted.

SECTION 6. IC 4-22-2-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25. (a) An agency has one (1) year from the date that it publishes a notice of intent to adopt a rule in the Indiana Register under section 23 of this chapter to comply with sections 26 through 33 of this chapter and obtain the approval or deemed approval of the governor. If an agency determines that a rule cannot be adopted within one (1) year after the publication of the notice of intent to adopt a rule under section 23 of this chapter, the agency shall, before the two hundred fiftieth day following the publication of the notice of intent to adopt a rule under section 23 of this chapter:

(1) notify the chairperson of the administrative oversight committee in writing of the:

~~(1)~~ (A) reasons why the rule was not adopted and the expected date the rule will be completed; and

~~(2)~~ (B) expected date the rule will be approved or deemed approved by the governor or withdrawn under section 41 of this chapter; **and**

(2) provide an electronic copy of the notice required under this subsection to the publisher.

(b) If a rule is not approved before the later of:

(1) one (1) year after the agency publishes notice of intent to adopt the rule under section 23 of this chapter; or

(2) the expected date contained in a notice concerning the rule that is provided to the administrative rules oversight committee under subsection (a)(2);

a later approval or deemed approval is ineffective, and the rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 7. IC 4-22-2-28, AS AMENDED BY P.L.226-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28. (a) As used in this section, "total estimated economic impact" means the annual economic impact of a rule on all regulated persons after the rule is fully implemented under subsection (g).

(b) The Indiana economic development corporation established by IC 5-28-3-1:

(1) shall review a proposed rule that:

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(A) imposes requirements or costs on small businesses (as defined in IC 4-22-2.1-4); and

(B) is referred to the corporation by an agency under IC 4-22-2.1-5(c); and

(2) may review a proposed rule that imposes requirements or costs on businesses other than small businesses (as defined in IC 4-22-2.1-4).

After conducting a review under subdivision (1) or (2), the corporation may suggest alternatives to reduce any regulatory burden that the proposed rule imposes on small businesses or other businesses. The agency that intends to adopt the proposed rule shall respond in writing to the Indiana economic development corporation concerning the corporation's comments or suggested alternatives before adopting the proposed rule under section 29 of this chapter.

(c) Subject to subsection (f) and not later than fifty (50) days before the public hearing required by section 26 of this chapter, an agency shall submit a proposed rule to the ~~legislative services agency~~ **office of management and budget** for a review under subsection (d) if the agency proposing the rule determines that the rule will have a total estimated economic impact greater than five hundred thousand dollars (\$500,000) on all regulated persons. In determining the total estimated economic impact under this subsection, the agency shall consider any applicable information submitted by the regulated persons affected by the rule. To assist the ~~legislative services agency~~ **office of management and budget** in preparing the fiscal impact statement required by subsection (d), the agency shall submit, along with the proposed rule, the data used and assumptions made by the agency in determining the total estimated economic impact of the rule.

(d) Except as provided in subsection (e), before the adoption of the rule, and not more than forty-five (45) days after receiving a proposed rule under subsection (c), the ~~legislative services agency~~ **office of management and budget** shall prepare, using the data and assumptions provided by the agency proposing the rule, along with any other data or information available to the ~~legislative services agency~~ **office of management and budget**, a fiscal impact statement concerning the effect that compliance with the proposed rule will have on:

(1) the state; and

(2) all persons regulated by the proposed rule.

The fiscal impact statement must contain the total estimated economic impact of the proposed rule and a determination concerning the extent to which the proposed rule creates an unfunded mandate on a state

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agency or political subdivision. The fiscal impact statement is a public document. The ~~legislative services~~ **agency office of management and budget** shall make the fiscal impact statement available to interested parties upon request. The agency proposing the rule shall consider the fiscal impact statement as part of the rulemaking process and shall provide the ~~legislative services~~ **agency office of management and budget** with the information necessary to prepare the fiscal impact statement, including any economic impact statement prepared by the agency under IC 4-22-2.1-5. The ~~legislative services~~ **agency office of management and budget** may also receive and consider applicable information from the regulated persons affected by the rule in preparation of the fiscal impact statement.

(e) With respect to a proposed rule subject to IC 13-14-9:

(1) the department of environmental management shall give written notice to the ~~legislative services~~ **agency office of management and budget** of the proposed date of preliminary adoption of the proposed rule not less than sixty-six (66) days before that date; and

(2) the ~~legislative services~~ **agency office of management and budget** shall prepare the fiscal impact statement referred to in subsection (d) not later than twenty-one (21) days before the proposed date of preliminary adoption of the proposed rule.

(f) In determining whether a proposed rule has a total estimated economic impact greater than five hundred thousand dollars (\$500,000), the agency proposing the rule shall consider the impact of the rule on any regulated person that already complies with the standards imposed by the rule on a voluntary basis.

(g) For purposes of this section, a rule is fully implemented after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to certain regulated persons; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all regulated persons that will be affected by the rule.

In determining the total estimated economic impact of a proposed rule under this section, the agency proposing the rule shall consider the annual economic impact on all regulated persons beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total estimated economic impact of a rule under this section.



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SECTION 8. IC 4-22-2-28.1, AS AMENDED BY SEA 234-2006, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28.1. (a) This section applies to the following:

(1) A rule for which the notice required by section 23 of this chapter **or by IC 13-14-9-3** is published by an agency ~~after June 30, 2005~~ **or by any of the boards (as defined in IC 13-11-2-18).**

(2) A rule for which:

(A) the notice required by IC 13-14-9-3; or

(B) an appropriate later notice for circumstances described in subsection (g);

is published by the department of environmental management after June 30, 2006.

(b) As used in this section, "coordinator" refers to the small business regulatory coordinator assigned to a rule by an agency under subsection (e).

(c) As used in this section, "director" refers to the director or other administrative head of an agency.

(d) As used in this section, "small business" means any person, firm, corporation, limited liability company, partnership, or association that:

(1) is actively engaged in business in Indiana and maintains its principal place of business in Indiana;

(2) is independently owned and operated;

(3) employs not more than one hundred (100) full-time employees; and

(4) has gross annual receipts of not more than five million dollars (\$5,000,000).

(e) For each ~~(1)~~ rulemaking action and ~~(2)~~ rule finally adopted as a result of a rulemaking action by an agency under this chapter, the agency shall assign one (1) staff person to serve as the agency's small business regulatory coordinator with respect to the proposed or adopted rule. The agency shall assign a staff person to a rule under this subsection based on the person's knowledge of, or experience with, the subject matter of the rule. A staff person may serve as the coordinator for more than one (1) rule proposed or adopted by the agency if the person is qualified by knowledge or experience with respect to each rule. Subject to subsection (f):

(1) in the case of a proposed rule, the ~~agency's~~ notice of intent to adopt the rule **published** under section 23 of this chapter; **or**

(2) in the case of a rule proposed by the department of environmental management or any of the boards (as defined in IC 13-11-2-18), the notice published under IC 13-14-9-3 or the findings published under IC 13-14-9-8(b)(1), whichever

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applies;

must include the name, address, telephone number, and electronic mail address of the small business coordinator for the proposed rule. Subject to subsection (f), in the case of a rule finally adopted, ~~by the agency,~~ the final rule, as published in the Indiana Register, ~~and the Indiana Administrative Code,~~ must include the name, address, telephone number, and electronic mail address of the coordinator.

(f) This subsection applies to a rule adopted by the department of environmental management or any of the boards (as defined in IC 13-11-2-18) under IC 13-14-9. Subject to subsection (g), the department shall include in the notice provided under IC 13-14-9-3 **or in the findings published under IC 13-14-9-8(b)(1), whichever applies,** and in the publication of the final rule in the Indiana Register: ~~and the Indiana Administrative Code:~~

(1) a statement of the resources available to regulated entities through the technical and compliance assistance program established under IC 13-28-3;

(2) the name, address, telephone number, and electronic mail address of the ombudsman designated under IC 13-28-3-2;

(3) if applicable, a statement of:

(A) the resources available to small businesses through the small business stationary source technical assistance program established under IC 13-28-5; and

(B) the name, address, telephone number, and electronic mail address of the ombudsman for small business designated under IC 13-28-5-2(3); and

(4) the information required by subsection (e).

The coordinator assigned to the rule under subsection (e) shall work with the ombudsman described in subdivision (2) and the office of voluntary compliance established by IC 13-28-1-1 to coordinate the provision of services required under subsection (h) and IC 13-28-3. If applicable, the coordinator assigned to the rule under subsection (e) shall work with the ombudsman referred to in subdivision (3)(B) to coordinate the provision of services required under subsection (h) and IC 13-28-5.

(g) If the notice provided under IC 13-14-9-3 is not published as allowed by IC 13-14-9-7, the department of environmental management shall publish in the notice provided under IC 13-14-9-4 the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3. If neither the notice under IC 13-14-9-3 nor the notice under IC 13-14-9-4 is published as allowed by IC 13-14-9-8, the department of environmental management shall

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publish in the commissioner's written findings under IC 13-14-9-8(b) the information that subsection (f) would otherwise require to be published in the notice under IC 13-14-9-3.

(h) The coordinator assigned to a rule under subsection (e) shall serve as a liaison between the agency and any small business subject to regulation under the rule. The coordinator shall provide guidance to small businesses affected by the rule on the following:

- (1) Any requirements imposed by the rule, including any reporting, record keeping, or accounting requirements.
- (2) How the agency determines or measures compliance with the rule, including any deadlines for action by regulated entities.
- (3) Any penalties, sanctions, or fines imposed for noncompliance with the rule.
- (4) Any other concerns of small businesses with respect to the rule, including the agency's application or enforcement of the rule in particular situations. However, in the case of a rule adopted under IC 13-14-9, the coordinator assigned to the rule may refer a small business with concerns about the application or enforcement of the rule in a particular situation to the ombudsman designated under IC 13-28-3-2 or, if applicable, under IC 13-28-5-2(3).

(i) The coordinator assigned to a rule under subsection (e) shall provide guidance under this section in response to questions and concerns expressed by small businesses affected by the rule. The coordinator may also issue general guidelines or informational pamphlets to assist small businesses in complying with the rule. Any guidelines or informational pamphlets issued under this subsection shall be made available:

- (1) for public inspection and copying at the offices of the agency under IC 5-14-3; and
- (2) electronically through electronic gateway access.

(j) The coordinator assigned to a rule under subsection (e) shall keep a record of all comments, questions, and complaints received from small businesses with respect to the rule. The coordinator shall deliver the record, along with any accompanying documents submitted by small businesses, to the director:

- (1) not later than ten (10) days after the date on which the rule is ~~file stamped by the secretary of state~~ **submitted to the publisher** under section 35 of this chapter; and
- (2) before July 15 of each year during which the rule remains in effect.

The coordinator and the director shall keep confidential any

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information concerning a small business to the extent that the information is exempt from public disclosure under IC 5-14-3-4.

(k) Not later than November 1 of each year, the director shall:

- (1) compile the records received from all of the agency's coordinators under subsection (j);
- (2) prepare a report that sets forth:
 - (A) the number of comments, complaints, and questions received by the agency from small businesses during the most recent state fiscal year, categorized by the subject matter of the rules involved;
 - (B) the number of complaints or questions reported under clause (A) that were resolved to the satisfaction of the agency and the small businesses involved;
 - (C) the total number of staff serving as coordinators under this section during the most recent state fiscal year;
 - (D) the agency's costs in complying with this section during the most recent state fiscal year; and
 - (E) the projected budget required by the agency to comply with this section during the current state fiscal year; and
- (3) deliver the report to the legislative council in an electronic format under IC 5-14-6 and to the Indiana economic development corporation established by IC 5-28-3.

SECTION 9. IC 4-22-2-31, AS AMENDED BY P.L.215-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 31. ~~(a)~~ After an agency has complied with section 29 of this chapter, or with IC 13-14-9-9(1) or IC 13-14-9-9(2), as applicable, the agency shall submit its rule to the attorney general for approval. The agency shall submit the following to the attorney general:

- (1) The rule in the form required by section 20 of this chapter.
- (2) The documents required by section 21 of this chapter.
- (3) Written authorization to proceed issued by the publisher under section 24(g) of this chapter.
- (4) Any other documents specified by the attorney general.

The attorney general may require the agency to submit any supporting documentation that the attorney general considers necessary for the attorney general's review under section 32 of this chapter. The agency may submit any additional supporting documentation the agency considers necessary.

~~(b) The agency shall submit the following documents to the attorney general:~~

- ~~(1) One (1) original copy of the rule:~~

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~~(2) Two (2) copies of the rule.~~

~~(3) One (1) copy of any matters incorporated by reference under section 21 of this chapter.~~

~~(4) Two (2) copies of any supporting documentation submitted under subsection (a).~~

SECTION 10. IC 4-22-2-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 34. (a) The governor may approve or disapprove a rule submitted under section 33 of this chapter with or without cause.

(b) The governor has fifteen (15) days from the date that an agency submits a rule under section 33 of this chapter to approve or disapprove the rule. However, the governor may take thirty (30) days to approve or disapprove the rule if the governor files a statement with the **secretary of state publisher** within the first fifteen (15) days after an agency submits the rule that states that the governor intends to take an additional fifteen (15) days to approve or disapprove the rule. If the governor neither approves nor disapproves the rule within the allowed period, the rule is deemed approved, and the agency may submit the rule to the **secretary of state publisher** without the approval of the governor.

SECTION 11. IC 4-22-2-35, AS AMENDED BY P.L.215-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 35. (a) When a rule has been approved or deemed approved by the governor within the period allowed by section 25 of this chapter, the agency shall immediately submit the rule to the **secretary of state publisher** for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter.

(b) The agency shall submit to the **secretary of state publisher** the copies of the rule and other documents specified in section 31 of this chapter.

(c) Subject to section 39 of this chapter, the **secretary of state publisher** shall:

- (1) accept the rule for filing; and
- (2) ~~file stamp and indicate electronically record~~ the date and time the rule is accepted. ~~on every duplicate original copy submitted.~~

SECTION 12. IC 4-22-2-37.1, AS AMENDED BY P.L.235-2005, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

- (1) An order adopted by the commissioner of the Indiana

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department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.

(2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.

(3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.

(4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

(5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.

(6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.

(7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.

(8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.

(9) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.

(10) An emergency rule adopted by the Indiana ~~transportation~~ finance authority under IC 8-21-12.

(11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.

(12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.

(13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:

(A) the variance procedures are included in the rules; and

(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

(14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.

(15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.

(16) An emergency rule adopted by the Indiana gaming

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commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.

(17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.

(18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.

(19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.

(20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.

(21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34.

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33.

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the **number of copies format** of the rule and other documents to be submitted under this subsection.

(d) After the document control number has been assigned, the agency shall submit the rule to the **secretary of state publisher** for

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filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The ~~secretary of state shall determine the number of copies~~ **publisher shall determine the format** of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the ~~secretary of state~~ **publisher** shall:

- (1) accept the rule for filing; and
- (2) ~~file stamp and indicate~~ **electronically record** the date and time that the rule is accepted. ~~on every duplicate original copy submitted.~~

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j) and (k), a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule

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adopted under sections 24 through 36 of this chapter or this section.

(i) This section may not be used to readopt a rule under IC 4-22-2.5.

(j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

SECTION 13. IC 4-22-2-38 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 38. (a) This section applies to a rulemaking action resulting in any of the following rules:

(1) A rule that brings another rule into conformity with section 20 of this chapter.

(2) A rule that amends another rule to replace an inaccurate reference to a statute, rule, regulation, other text, governmental entity, or location with an accurate reference, when the inaccuracy is the result of the rearrangement of a federal or state statute, rule, or regulation under a different citation number, a federal or state transfer of functions from one (1) governmental entity to another, a change in the name of a federal or state governmental entity, or a change in the address of an entity.

(3) A rule correcting any other typographical, clerical, or spelling error in another rule.

(b) Sections 24 through 37.1 of this chapter do not apply to rules described in subsection (a).

(c) Notwithstanding any other statute, an agency may adopt a rule described by subsection (a) without complying with any statutory notice, hearing, adoption, or approval requirement. In addition, the governor may adopt a rule described in subsection (a) for an agency without the agency's consent or action.

(d) A rule described in subsection (a) shall be submitted to the publisher for the assignment of a document control number. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) After a document control number is assigned, the agency (or the governor, for the agency) shall submit the rule to the **secretary of state publisher** for filing. The agency (or the governor, for the agency) shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The

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~~secretary of state~~ **publisher** shall determine the ~~number of copies~~ **format** of the rule and other documents to be submitted under this subsection.

(f) Subject to section 39 of this chapter, the ~~secretary of state~~ **publisher** shall:

- (1) accept the rule for filing; and
- (2) ~~file stamp and indicate~~ **electronically record** the date and time that it is accepted. ~~on every duplicate original copy that is submitted.~~

(g) Subject to subsection (h), a rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The date that the rule being corrected by a rule adopted under this section becomes effective.
- (2) The date that is forty-five (45) days from the date and time that the rule adopted under this section is accepted for filing under subsection (f).

(h) The governor or the attorney general may file an objection to a rule that is adopted under this section before the date that is forty-five (45) days from the date and time that the rule is accepted for filing under subsection (f). When filed with the ~~secretary of state~~, **publisher**, the objection has the effect of invalidating the rule.

SECTION 14. IC 4-22-2-39, AS AMENDED BY P.L.215-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 39. (a) When an agency submits a rule for filing under section 35, 37.1, or 38 of this chapter, the ~~secretary of state~~ **publisher** may accept the rule for filing only if the following conditions are met:

- (1) The following documents are submitted to allow the ~~secretary of state~~ **publisher** to comply with IC 4-22-7-5:
 - (A) One (1) ~~original~~ **electronic** copy of the rule.
 - ~~(B) Two (2) copies of the rule.~~
 - ~~(C) (B) One (1) copy of any matters incorporated by reference under section 21 of this chapter in the format specified by the publisher.~~
 - ~~(D) Two (2) copies~~ **(C) One (1) copy** of any supporting documentation submitted under ~~section 31(a)~~ **section 31** of this chapter **in the format specified by the publisher.**
- (2) Each submitted copy includes a reference to the document control number assigned to the rule by the publisher.
- (3) Each submitted copy indicates that the agency has conducted its rulemaking action in conformity with all procedures required by law. However, if section 31 of this chapter applies to the rule,

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the ~~secretary of state~~ **publisher** shall rely on the approval of the attorney general as the basis for determining that the agency has complied with all procedures required before the date of the approval.

- (b) If a rule includes a statement that the rule is not effective until:
- (1) an agency has complied with requirements established by the federal or state government;
 - (2) a specific period of time has elapsed; or
 - (3) a date has occurred;

the agency has complied with subsection (a)(3) even if the described event or time has not occurred before the ~~secretary of state~~ **publisher** reviews the rule under this section.

(c) The ~~secretary of state~~ **publisher** shall take no more than three (3) business days to complete the review of a rule under this section.

SECTION 15. IC 4-22-2-40 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 40. (a) At any time before a rule is accepted for filing by the ~~secretary of state~~ **publisher** under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may recall it. A rule may be recalled regardless of whether it has been disapproved by the attorney general under section 32 of this chapter or disapproved by the governor under section 34 of this chapter.

(b) Sections 24 through 38 of this chapter do not apply to a recall action under this section. However, the agency shall distribute a notice of its recall action to the publisher for publication in the Indiana Register. Sections 24 and 26 of this chapter do not apply to a readoption action under subsection (c).

(c) After an agency recalls a rule, the agency may reconsider its adoption action and adopt an identical rule or a revised rule. However, if sections 24 through 36 of this chapter apply to the recalled rule, the readopted rule must comply with the requirements under section 29 of this chapter.

(d) The recall of a rule under this section voids any approval given after the rule was adopted and before the rule was recalled.

- (e) If a rule is:
- (1) subject to sections 31 and 33 of this chapter;
 - (2) recalled under subsection (a); and
 - (3) readopted under subsection (c);

the agency shall resubmit the readopted version of the recalled rule to the attorney general and the governor for approval. The attorney general and the governor have the full statutory period to approve or disapprove the readopted rule. The agency also shall comply with any

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other applicable approval requirement provided by statute.

(f) The readopted version of a recalled rule is effective only after the agency has complied with section 35, 37.1, or 38 of this chapter.

SECTION 16. IC 4-22-2-41 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 41. (a) At any time before a rule is accepted by the ~~secretary of state~~ **publisher** for filing under section 35, 37.1, or 38 of this chapter, the agency that adopted the rule may withdraw it.

(b) Sections 24 through 40 of this chapter do not apply to a withdrawal action. However, the withdrawing agency shall distribute a notice of the withdrawal to the publisher for publication in the Indiana Register.

(c) The withdrawal of a rule under this section terminates the rulemaking action, and the withdrawn rule may become effective only through another rulemaking action initiated under this chapter.

SECTION 17. IC 4-22-2.1-5, AS ADDED BY P.L.188-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented as described in subsection (b). The statement required by this section must include the following:

- (1) An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.
- (3) ~~★~~ **An** estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. The agency is not required to submit the proposed rule to the ~~legislative services agency office~~ **of management and budget** for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.
- (4) A statement justifying any requirement or cost that is:
 - (A) imposed on small businesses by the rule; and
 - (B) not expressly required by:
 - (i) the statute authorizing the agency to adopt the rule; or
 - (ii) any other state or federal law.

The statement required by this subdivision must include a

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reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

(5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

(A) The establishment of less stringent compliance or reporting requirements for small businesses.

(B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(C) The consolidation or simplification of compliance or reporting requirements for small businesses.

(D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.

(E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

(b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

(1) the conclusion of any phase-in period during which:

(A) the rule is gradually made to apply to small businesses or certain types of small businesses; or

(B) the costs of the rule are gradually implemented; and

(2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall describe any assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3).

(c) The agency shall:

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- (1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and
- (2) deliver a copy of the statement, along with the proposed rule, to the Indiana economic development corporation not later than the date of publication under subdivision (1).

SECTION 18. IC 4-22-2.5-4, AS AMENDED BY P.L.188-2005, SECTION 7, AND AS AMENDED BY P.L.215-2005, SECTION 10, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Except as provided in subsection (b) *and subject to section 3.1 of this chapter*, an agency may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If, not later than thirty (30) days after an agency's publication of notice of its intention to adopt a rule under ~~IC 4-22-2-24~~ IC 4-22-2-23 using the listing allowed under subsection (a), a person submits to the agency a written request and the person's basis for the request that a particular rule be readopted separately from the readoption rule described in subsection (a), the agency must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 4-22-2 with respect to the rule.

(c) If the agency does not receive a written request under subsection (b) regarding a rule within thirty (30) days after the agency's publication of notice, the agency may:

- (1) submit the rule for filing with the **secretary of state publisher** under IC 4-22-2-35; and **publish notice in the Indiana Register that the agency has readopted the rule**; or
- (2) elect the procedure for readoption under IC 4-22-2.

SECTION 19. IC 4-22-7-5, AS AMENDED BY P.L.215-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) The **secretary of state publisher** shall retain the **original electronic** copy of each rule that has been accepted for filing by the **secretary of state publisher** (including documents filed with the **secretary of state publisher** under IC 4-22-2-21) and one (1) copy of any supporting documentation submitted under ~~section 31 of this chapter. IC 4-22-2-31~~. The **secretary of state publisher** has official custody of an agency's adopted rules.

(b) ~~Within one (1) business day after the date that the secretary of state accepts a rule for filing, the secretary of state shall distribute one~~

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(1) copy of the rule to the publisher in the form specified by the publisher. The secretary of state shall also return to the agency one (1) copy of the rule and one (1) copy of any supporting documentation submitted under section 31 of this chapter. However, the secretary of state **When the publisher distributes or electronically publishes a rule, the publisher** may distribute the rule without including the full text of any matter incorporated into the rule.

(c) ~~When the copies are distributed under subsection (b), the secretary of state shall include a notice briefly describing the incorporated matters.~~

SECTION 20. IC 4-22-7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. (a) This section applies to the following agency statements:

- (1) Executive orders issued by the governor.
- (2) Notices that a rule has been disapproved or objected to by the attorney general under IC 4-22-2-32 or IC 4-22-2-38, or disapproved or objected to by the governor under IC 4-22-2-34 or IC 4-22-2-38.
- (3) Official opinions of the attorney general (excluding advisory letters).
- (4) Official explanatory opinions of the state board of accounts based on an official opinion of the attorney general.
- (5) Any other statement:
 - (A) that:
 - (i) interprets, supplements, or implements a statute or rule;
 - (ii) has not been adopted in compliance with IC 4-22-2;
 - (iii) is not intended by its issuing agency to have the effect of law; and
 - (iv) may be used in conducting the agency's external affairs; or
 - (B) that specifies a policy that an agency relies upon to:
 - (i) enforce a statute or rule;
 - (ii) conduct an audit or investigation to determine compliance with a statute or rule; or
 - (iii) impose a sanction for violation of a statute or rule.

This subdivision includes information bulletins, revenue rulings (including, subject to IC 6-8.1-3-3.5, a letter of findings), and other guidelines of an agency.

- (6) A statement of the governor concerning extension of an approval period under IC 4-22-2-34.

(b) Whenever an agency adopts a statement described by subsection (a), the agency shall distribute ~~two (2) duplicate copies of electronic~~

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copies of the statement to the publisher for publication and indexing in the Indiana Register (**in the format specified by the publisher under IC 4-22-2**) and the copies required by IC 4-23-7.1-26 to the Indiana library and historical department. However, if a statement under subsection (a)(5)(B) is in the form of a manual, book, pamphlet, or reference publication, the publisher is required to publish only the title of the manual, book, or reference publication.

(c) Every agency that adopts a statement described under subsection (a) also shall maintain a current list of all agency statements described in subsection (a) that it may use in its external affairs. The agency shall update the listing at least every thirty (30) days. The agency shall include on the list the name of the agency and the following information for each statement:

- (1) Title.
- (2) Identification number.
- (3) Date originally adopted.
- (4) Date of last revision.
- (5) Reference to all other statements described in subsection (a) that are repealed or amended by the statement.
- (6) Brief description of the subject matter of the statement.

(d) At least quarterly, every agency that maintains a list under subsection (c) shall distribute ~~two (2) copies of the list to the publisher~~ and two (2) copies to the Indiana library and historical department and the administrative rules oversight committee.

SECTION 21. IC 4-22-8-2, AS AMENDED BY P.L.215-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) The publisher shall publish a serial publication with the name Indiana Register at least six (6) times each year.

(b) Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Register in electronic form only. ~~However, the publisher shall distribute a printed copy of the Indiana Register to each federal depository library in Indiana.~~

(c) The publisher may meet the requirement to publish the Indiana Register electronically by permanently publishing a copy of the Indiana Register on the Internet.

SECTION 22. IC 4-22-8-5, AS AMENDED BY P.L.215-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) The publisher shall compile, computerize, index, and print a codification of the general and permanent rules of the agencies with the name Indiana Administrative Code. The publisher may publish, with the Indiana Administrative Code, any tables,

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explanatory material, or other documents that the publisher considers appropriate.

(b) The publisher shall establish a system to maintain, supplement, and recompile the Indiana Administrative Code when necessary or appropriate.

(c) Notwithstanding any law, after June 30, 2006, the publisher shall publish the Indiana Administrative Code in electronic form only. ~~However, the publisher shall distribute a printed copy of the Indiana Administrative Code to each federal depository library in Indiana.~~

(d) The publisher may meet the requirement to publish the Indiana Administrative Code electronically by permanently publishing a copy of the Indiana Administrative Code on the Internet.

SECTION 23. IC 4-22-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. This chapter applies to all rules that have been accepted for filing:

(1) by the secretary of state **before July 1, 2006; or**

(2) **by the publisher after June 30, 2006;**

under IC 4-22-2.

SECTION 24. IC 4-22-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Any rule that has been adopted in conformity with IC 4-22-2 (including a matter incorporated by reference into a rule) shall be judicially noticed by all courts and agencies of this state.

(b) Subject to subsection (c), the official publication of a rule in the Indiana Register or the Indiana Administrative Code, **including the official publication of rules published only in electronic format after July 1, 2006**, shall be considered prima facie evidence that the rule was adopted in conformity with IC 4-22-2 and that the text published is the text adopted.

(c) The 1979 edition of the Indiana Administrative Code shall be conclusively presumed to contain the accurate, correct, and complete text of all rules in effect on December 31, 1978. All rules filed with the secretary of state before December 31, 1978, and not compiled in the 1979 edition of the Indiana Administrative Code are void.

SECTION 25. IC 4-22-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. The following, as they appear in an adopted version of a rule filed with the secretary of state **before July 1, 2006, or filed with the publisher after June 30, 2006**, in the Indiana Register, or in the Indiana Administrative Code, are not part of the official text of any rule, are not intended to affect the meaning, application, or construction of any rule, and may be altered at any time by the publisher of the Indiana Register or Indiana

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Administrative Code:

- (1) Digests.
- (2) Title, article, rule, and section headings.
- (3) Title, article, and rule analyses (listings of article, rule, and section headings).
- (4) Statutory authority citation lines.
- (5) Statutes affected citation lines.
- (6) Bracketed internal references.
- ~~(7) Cited in lines.~~
- ~~(8)~~ (7) History lines or history blocks.
- ~~(9)~~ (8) Revisor's notes.

SECTION 26. IC 12-10.5-1-9, AS ADDED BY P.L.37-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. (a) Before finally adopting a rule under IC 4-22-2 to implement this chapter, the division shall consult with and fully consider any comments submitted by:

- (1) caretakers providing care for a special needs individual under this chapter;
- (2) individuals with special needs receiving care from a caretaker under this chapter;
- (3) area agencies on aging;
- (4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and
- (5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

- (1) include protections for the rights, safety, and welfare of individuals with special needs receiving care from a caretaker under this chapter, including reasonable monitoring and reporting requirements;
- (2) serve distinct populations, including:
 - (A) the aged;
 - (B) persons with developmental disabilities; and
 - (C) persons with physical disabilities;

in a manner that recognizes, and appropriately responds to, the particular needs of the population;

- (3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing costly or unduly burdensome requirements on caretakers or other service providers, including:

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- (A) requirements for proof of financial responsibility; and
- (B) monitoring, enforcement, reporting, or other administrative requirements; and
- (4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this chapter.

(c) Before submitting a rule adopted under this chapter to the attorney general for final approval under IC 4-22-2-31, the division shall submit to the publisher (as defined in IC 4-22-2-3(f)) for publication in the Indiana Register the division's written response under IC 4-22-2-23 to any comments received from the parties described in subsection (a). **Submissions to the publisher shall be made in the electronic format specified by the publisher.**

SECTION 27. IC 12-10.5-2-3, AS ADDED BY P.L.37-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) Before finally adopting a rule under IC 4-22-2 to implement this chapter, the division shall consult with and fully consider any comments submitted by:

- (1) continuum of care providers providing care under this chapter;
- (2) individuals receiving care under this chapter;
- (3) area agencies on aging;
- (4) consumers and providers of home and community based services under IC 12-10-10 and IC 12-10-11.5; and
- (5) any other agency, volunteer group, faith based group, or individual that the division considers appropriate;

to ensure that the rule complies with the requirements set forth in subsection (b).

(b) Rules adopted under this chapter must:

- (1) include protections for the rights, safety, and welfare of individuals receiving care under this chapter;
- (2) serve distinct populations, including:
 - (A) the aged;
 - (B) persons with developmental disabilities; and
 - (C) persons with physical disabilities;

in a manner that recognizes, and appropriately responds to, the particular needs of the population;

- (3) not create barriers to the availability of home and community based services under IC 12-10-10 and IC 12-10-11.5 by imposing costly or unduly burdensome requirements on continuum of care providers or other service providers, including:

- (A) requirements for proof of financial responsibility; and
- (B) monitoring, enforcement, reporting, or other administrative requirements; and

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(4) otherwise comply with IC 12-10-10, IC 12-10-11.5, and this chapter.

(c) Before submitting a rule adopted under this chapter to the attorney general for final approval under IC 4-22-2-31, the division shall submit to the publisher (as defined in IC 4-22-2-3(f)) for publication in the Indiana Register the division's written response under IC 4-22-2-23 to any comments received from the parties described in subsection (a). **Submissions to the publisher shall be made in the electronic format specified by the publisher.**

SECTION 28. IC 13-14-9-4.2, AS AMENDED BY P.L.226-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4.2. Not less than fourteen (14) days before the date of preliminary adoption of a proposed rule by a board, the department shall make available to the board the fiscal impact statement prepared by the ~~legislative services agency~~ **office of management and budget** with respect to the proposed rule under IC 4-22-2-28(e).

SECTION 29. IC 13-14-9-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) A board may not adopt a rule until all of the following occur:

- (1) The board holds a board meeting on the proposed rule.
 - (2) The department, after approval of the proposed rule by the board under subsection (c), publishes the following in the Indiana Register as provided in IC 4-22-2-24(c):
 - (A) The full text of the proposed rule, including any amendments arising from the comments received before or during the meeting held under subdivision (1).
 - (B) A summary of the response of the department to all comments received at the meeting held under subdivision (1).
 - (C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the ~~legislative services agency~~ **office of management and budget** fiscal analysis required under IC 4-22-2-28.
 - (3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.
 - (4) If a third public comment period is required under section 4.5 of this chapter, the department publishes notice of the third public comment period in the Indiana Register.
- (b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

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(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

- (1) proceed to publication under subsection (a)(2);
- (2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8 of this chapter; or
- (3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 30. IC 13-14-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. In addition to the requirements of section 8 of this chapter, the department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

- (1) The full text of the proposed rule, as most recently prepared by the department.
- (2) The written responses of the department to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; and

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

- (3) The full text of the ~~legislative services agency~~ **office of management and budget** fiscal analysis if a fiscal analysis is required under IC 4-22-2-28.

SECTION 31. IC 13-14-9.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Except as provided in subsection (b), the department or a board that has rulemaking authority under this title may readopt all rules subject to expiration under this chapter under one (1) rule that lists all rules that are readopted by their titles and subtitles only. A rule that has expired

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but is readopted under this subsection may not be removed from the Indiana Administrative Code.

(b) If a person submits to the department or a board that has rulemaking authority under this title a written request and a basis for the request during the first comment period that a particular rule be readopted separately from the readoption rule described in subsection (a), the department or board must:

- (1) readopt that rule separately from the readoption rule described in subsection (a); and
- (2) follow the procedure for adoption of administrative rules under IC 13-14-9 with respect to the rule.

(c) If the department or board does not receive a written request under subsection (b) regarding a rule within the first comment period, the agency may:

- (1) submit the rule for filing with the ~~secretary of state~~ **publisher** under IC 4-22-2-35 and publish notice in the Indiana Register that the agency has readopted the rule; or
- (2) elect the procedure for readoption under IC 13-14-9.

SECTION 32. IC 14-10-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. (a) The department may adopt emergency rules under IC 4-22-2-37.1 to carry out the duties of the department under the following:

- (1) IC 14-9.
- (2) This article.
- (3) IC 14-11.
- (4) IC 14-12-2.
- (5) IC 14-14.
- (6) IC 14-17-3.
- (7) IC 14-18, except IC 14-18-6 and IC 14-18-8.
- (8) IC 14-19-1 and IC 14-19-8.
- (9) IC 14-20-1.
- (10) IC 14-21.
- (11) IC 14-22-3, IC 14-22-4, and IC 14-22-5.
- (12) IC 14-23-1.
- (13) IC 14-25, except IC 14-25-8-3, IC 14-25-11, and IC 14-25-13.
- (14) IC 14-26.
- (15) IC 14-27.
- (16) IC 14-28.
- (17) IC 14-29.
- (18) IC 14-35-1, IC 14-35-2, and IC 14-35-3.

(b) A rule adopted under subsection (a) expires not later than one

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(1) year after the rule is accepted for filing by the ~~secretary of state~~.
publisher of the Indiana Register.

SECTION 33. IC 22-8-1.1-15.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15.1. ~~Other Standards.~~ Any interested person, including representatives of employers and representatives of employees may propose a standard to the commission, or the commission may do so on its own motion. Such proposals shall be in writing. In the development or adoption of each standard proposed in this manner, the commission shall appoint and consult with an advisory committee. The advisory committee shall include equal number of persons qualified to present the viewpoint of employers involved and of persons similarly qualified to present the viewpoint of the workers involved. All members of the advisory committee shall be experienced in the field to which the proposed standard will apply. The number of members of any advisory committee shall be at the discretion of the commission. Any standard developed shall not unduly burden interstate commerce. Any such standard must be adopted by the commission in accordance with ~~IC 1971~~, IC 4-22-2. The said standard shall be published in a newspaper of general circulation published in Marion County, Indiana, at least ten (10) days prior to the filing of said standard with the ~~secretary of state~~. **publisher of the Indiana Register.**

SECTION 34. IC 22-8-1.1-16.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 16.1. (a) The commission may adopt emergency temporary standards under IC 4-22-2-37.1. The emergency temporary standard shall be published in a newspaper of general circulation published in Marion County, Indiana, at least ten (10) days before the filing with the ~~secretary of state~~. **publisher of the Indiana Register.** In the exercise of this power, the commission shall first expressly determine:

- (1) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards; and
- (2) that such emergency standard is necessary to protect employees from such danger.

(b) Temporary emergency standards shall be effective only until a permanent standard is adopted under IC 4-22-2, or for six (6) months from the date of publication, whichever period is shorter. The publication of an emergency temporary standard shall begin a proceeding in accordance with section 15 of this chapter.

SECTION 35. IC 22-13-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) The commission

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shall adopt rules under IC 4-22-2 to create equipment laws applicable to regulated lifting devices.

(b) Except as provided in subsection (c), subject to the approval of the commission, the rules board shall adopt rules under IC 4-22-2 to create equipment laws applicable to regulated boilers and pressure vessels.

(c) Subject to the approval of the commission, the rules board may adopt emergency rules under IC 4-22-2-37.1 only to adopt by reference all or part of the following national boiler and pressure vessel codes:

- (1) The American Society of Mechanical Engineers Boiler and Pressure Vessel Code.
- (2) The National Board of Boiler and Pressure Vessel Inspectors Inspection Code.
- (3) The American Petroleum Institute 510 Pressure Vessel Inspection Code.
- (4) Any subsequent editions of the codes listed in subdivisions (1) through (3).

(d) An emergency rule adopted under subsection (c) expires on the earlier of the following dates:

- (1) Not more than two (2) years after the emergency rule is accepted for filing with the ~~secretary of state~~ **publisher of the Indiana Register**.
- (2) The date a permanent rule is adopted under IC 4-22-2.

(e) Subject to the approval of the commission, the regulated amusement device safety board established under IC 22-12-4.5 shall adopt rules under IC 4-22-2 to create equipment laws applicable to regulated amusement devices.

SECTION 36. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2006]: IC 4-22-8-7; IC 4-22-8-8.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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